

REMARKS

The comments of the Examiner as set forth in the office action of April 15, 2008 have been carefully studied and reviewed. In this response, claims 1, 6, and 8 have been amended and claims 4 and 5 have been canceled. Further, previously withdrawn claims 12-20 and 25-33 have been canceled. For the reasons set forth below it is respectfully urged that the claims in the present application are in condition for allowance.

Section 35 USC §112 Rejection

Claim 1 stands rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. While Applicant does not believe the 112 rejection is meritorious, the claim has been amended to address the concerns raised by the Examiner.

Section 35 USC §102 Rejection Based on Vukmanic, U.S. Patent No. 4,677,802

Claims 21-24 and 34-38 are rejected. As discussed in Applicants' Response of July 14, 2006 and Applicants' Appeal Brief of September 10, 2007, the Examiner has misconstrued the terms "stud" and "stud spacer." While Applicant is not apprised of the Examiner's construction of the terms, whatever that construction is, the construction is so broad as to encompasses runners and cross members in a suspended ceiling system. Such construction is unreasonable. It is inconsistent with the ordinary meaning of "stud." It is inconsistent with Applicants' specification and how the terms "stud" and "stud spacer" are used therein. Further, the construction given these terms by the Examiner is not in harmony with how a person of ordinary skill in the art would construe the terms.

As the September 10, 2007 Appeal Brief indicates, the Examiner has remained unresponsive to Applicants' request to explicitly set forth the Examiner's claim construction of

terms, “stud” and “stud spacer.” Applicants respectfully renew the request for the Patent Office to provide a claim construction for the terms “stud spacer” and “stud” as used in Applicants’ claims and specification.

35 USC §102 Rejection Based on Soucy, U.S. Patent No. 3,778,952

Claims 1 and 11 are rejected as being anticipated by U.S. 3,778,952. In order to anticipate a claim, a single piece of prior art, Soucy in the present instance, must show every element and limitation of the claim. Soucy does not show each and every element and limitation of the claim as now amended. In claim 1 for example, the following elements and limitation, as amended herein, provides that the main member includes a pair of side flanges and a pair of end flanges wherein the end flanges are adapted to be connected to the two studs that the stud spacer extends between. As the Examiner correctly notes in a rejection of claim 4, now canceled, Soucy does not include side flanges or the end flanges, and it follows that Soucy does not anticipate the claims.

Applicants take notice, however, of the rejections of claim 4 as not patentable over Soucy in view of US Patent No. 5,884,448 to Pellock and of claim 5 as not patentable over Soucy in view of Pellock further in view of Tollenaar. The restrictions of claim 4 and 5 are now included in amended claim 1. However, it is not obvious to modify Soucy with Pellock or Soucy with Pellock and Tollenaar to obtain the claimed invention. While the Pellock truss spacer includes side and end flanges, an ordinarily skilled artisan would be averse to forming the side and end flanges of Pellock on the bracing member of Soucy. Whether end flanges are turned oppositely from the side flanges as in Tollenaar is moot. Soucy, in fact, teaches against adding further structure to the bracing member, providing that teaching succinctly in the statement of objects of the invention. See Col. 1 lines 20-37. For example, Soucy provides a bracing element that is “readily removably engaged” between studs. End flanges adapted for

connection to the studs would have been counter to Soucy's object of being "readily removably engaged" with the studs. In a further example, Soucy provides a bracing element that can be constructed of "heavy gauge sheet material" by "conventional forms of manufacture". Additionally, for example, Soucy provides a bracing member that is "of simple construction", "easy to use", and "economically feasible". Forming the flanges of Pellock on the bracing member of Soucy would have clearly complicated the construction of the bracing member. Both due to the costs of extra material required and the added manufacturing complexity, the economic feasibility of the Soucy bracing member would be countered by adding the flanges of Pellock. Moreover, doing so could reduce the ease of use of the Soucy bracing member because the added flanges would tend to interfere with the stud flanges during installation barring even more manufacturing complexity in providing cut backs, for example, of end portions of side flanges to avoid interference. It is also worthy of note that Soucy has no need for end flanges that are adapted to be connected to the studs "to form a more rigid framing assembly" as described in column 2, lines 18-68 and column 3, lines 1-2. Likewise, an ordinarily skilled artisan would not be motivated to modify Soucy with the flanges of Pellock because Soucy provides requisite strength and stiffness with the heavy gauge sheet material from which the bracing member is manufactured. Thus, Soucy teaches against modification by adding the flanges of Pellock. Additionally, there would have been no motivation or suggestion to combine Pellock with Soucy or to combine Tollenaar with Soucy modified by Pellock. For at least these reasons, Claim 1 and claim 11 define patentable subject matter.

The rejection of claims 2, 3, 4, and 8 present similar issues to those discussed above. For the same reasons discussed above, these claims define patentable subject matter.

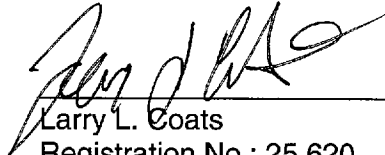
Soucy is the primary reference in all § 103 rejections. As pointed out above, Soucy repeatedly teaches against complicating or adding to the basic structure of the bracing member.

That fact seems indisputable. If the Patent Office believes that such is disputable, it is respectfully requested to set forth factual findings that put this issue in dispute.

For the foregoing reasons, it is respectfully urged that the claims in the present application are in condition for allowance and allowance is respectfully requested.

Respectfully submitted,

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